

**1605762 (Refugee) [2016] AATA 4499 (20 September 2016)**

**DECISION RECORD**

|                              |                                                                                             |
|------------------------------|---------------------------------------------------------------------------------------------|
| <b>DIVISION:</b>             | Migration & Refugee Division                                                                |
| <b>CASE NUMBER:</b>          | 1605762                                                                                     |
| <b>COUNTRY OF REFERENCE:</b> | Egypt                                                                                       |
| <b>MEMBER:</b>               | Antoinette Younes                                                                           |
| <b>DATE:</b>                 | 20 September 2016                                                                           |
| <b>PLACE OF DECISION:</b>    | Sydney                                                                                      |
| <b>DECISION:</b>             | The Tribunal affirms the decision to cancel the applicant's Subclass 866 (Protection) visa. |

Statement made on 20 September 2016 at 1:27pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to cancel the applicant's Subclass 866 (Protection) visa under s.109(1) of the *Migration Act 1958* (the Act).
2. The delegate cancelled the visa on the basis that the applicant had provided incorrect answers in the application for a protection visa. The issue in the present case is whether that ground for cancellation is made out, and if so, whether the visa should be cancelled.
3. The applicant appeared before the Tribunal on 17 August 2016 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's [partner]. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
4. The applicant was represented in relation to the review by his registered migration [agent].
5. For the following reasons, the Tribunal has concluded that the decision to cancel the applicant's visa should be affirmed.

### **CONSIDERATION OF CLAIMS AND EVIDENCE**

6. Section 109(1) of the Act allows the Minister to cancel a visa if the visa holder has failed to comply with ss.101, 102, 103, 104, 105 or 107(2) of the Act. Broadly speaking, these sections require non-citizens to provide correct information in their visa applications and passenger cards, not to provide bogus documents and to notify the Department of any incorrect information of which they become aware and of any relevant changes in circumstances.
7. The exercise of the cancellation power under s.109 of the Act is conditional on the Minister issuing a valid notice to the visa holder under s.107 of the Act, providing particulars of the alleged non-compliance. Where a notice is issued that does not comply with the requirements in s.107, the power to cancel the visa does not arise. Extracts of the Act relevant to this case are attached to this decision.

#### **Did the Notice comply with the requirements in s.107?**

8. Section 107 is only engaged if the Minister or delegate considers that the visa holder has not complied with one of the provisions mentioned in s.107(1). It is only then that the Minister or delegate is entitled to give notice to the visa holder under s.107. Therefore, if a notice is to be given under s.107, the Minister or delegate must have reached a state of mind where they consider that the visa holder has not complied with one or more of the relevant provisions.
9. The Tribunal has considered the validity of the Notice of Intention to Consider Cancellation. The Tribunal is satisfied that the Notice contains sufficient particulars to enable the applicant to identify and address the issues and also that the delegate had reached the necessary state of mind to engage s.107. The Tribunal finds that the notice issued under s.107 complied with the statutory requirements.

#### **10. Was there non-compliance as described in the s.107 notice?**

11. The issue before the Tribunal is whether there was non-compliance in the way described in the s.107 Notice, being the manner particularised in the notice, and if so, whether the visa should be cancelled. The non-compliance identified and particularised in the s.107 Notice was non-compliance with section 101 of the Act. Essentially, the Notice refers to the claims the applicant made in his protection visa application in relation to harm in Egypt on the basis of his Christian faith.

12. ***Form C of the protection visa application and the supporting statement***

13. In support of the application for review, the applicant provided a copy of the delegate's decision record which indicates that [in] April 2008, the applicant arrived in Australia as the holder of a [student] visa. [In] January 2011, the applicant's [father] arrived in Australia as the holder of a [temporary] visa. [In] February 2011, the applicant's father lodged an application for a protection visa which included the applicant. [In] April 2011, the applicant lodged his own application for a protection visa on form 866C – application for an applicant who wishes to submit their own claims to be a refugee. In the course of the hearing, the applicant confirmed those details. In relation to his father's application for a protection visa, the applicant stated that subsequent to the cancellation of his father's protection visa, his father has requested Ministerial Intervention and he is awaiting the outcome. The applicant told the Tribunal that since the cancellation of his visa, he has not worked because he has no permission.
14. The Tribunal discussed with the applicant the information contained in the delegate's decision record. Specifically, the Tribunal indicated that in relation to question 42 of the application, asking why he left Egypt, the applicant responded "*I left Egypt because I have been persecuted because of my religious activities. In Egypt the National Security Force arrested me because of my religion representation for all Christian students at the University. They accused me that I defame the Islamic religion. I will submit my details statement*". The Tribunal showed the applicant a copy of Form C and showed him questions 42 to 46 and the answers.
15. The applicant stated that he had sought previous advice from an unregistered agent by the name of [name] who helped him complete a previous form. The applicant stated that in relation to the current Form C and questions 42 to 46, the answers to those questions are not in his handwriting. The Tribunal asked him whose handwriting that could be and he stated that he does not know but he assumes that it was the representative who was acting for him at the time, namely [Mr A], who is now a deregistered migration agent for having engaged in fraudulent conduct in relation to clients for whom he was acting. The applicant's representative submitted that to her knowledge, [Mr A] has been deregistered. The Tribunal has confirmed that [Mr A's] Solicitor Practising Certificate was suspended on [two dates in 2012], he was barred by the Office of Migration Agents and Registration Authority (OMARA)<sup>1</sup>. The Tribunal showed the applicant the signatures appearing at questions 63 and 65 of Form C and whilst the applicant stated that he had signed at those questions, he said he could not recall exactly; he stated that [Mr A] could have signed at those questions. The applicant claimed that he had never seen Form C previously. The Tribunal asked the applicant if he recalls whether he had signed after the Form had been completed and he stated that when he signed, the Form had been typed on the computer. He later stated that he could not recall if the questions had been completed or not when or if he had signed.
16. The Tribunal acknowledges that given the disciplinary actions concerning the conduct of the former agent, [Mr A], it is possible that the agent acted in a questionable manner. However, the Tribunal found the applicant's evidence in relation to questions about the completion of Form C, to be evasive, inconsistent, incredible, vague and far-fetched. The Tribunal finds it

<sup>1</sup> [Information deleted].

difficult to accept that on the one hand, the applicant confirmed, albeit hesitantly, his signatures at questions 63 and 65, but on the other hand, he claimed that he could not recall. He was unable to provide the Tribunal with coherent answers in relation to how the Form was completed, or at what point he signed the relevant questions. The applicant's visa has been cancelled on the basis of provision of incorrect information and the Tribunal is of the view that given the significance of the cancellation, it is reasonable to expect the applicant to provide coherent answers about the completion of the Form and the signatures. The fact that he did not suggest to the Tribunal that the applicant has not been truthful about the completion of the Form. The Tribunal is of the view that given the disciplinary matters, it is 'easy' for the applicant to suggest fraud on the part of the former agent and considered in isolation, this could be plausible but when considered contextually, this explanation is not convincing.

17. The Tribunal showed the applicant the statement that has been provided in support of the protection visa application. Relevantly, in the statement, the applicant claimed:

18. *I am writing this statement to confirm that my brother, [Mr B] being killed by Muslim fanatic peoples (Salafeen and Salfess) who are take the revenge against me and my family....*

19. *My brother is innocent and he never commit any crime on his life. He loved all peoples regardless of their religion. He applied the Bible on his life....*

20. *When I called my family [in] June 2011, my mother informed me that my brother [Mr B] been killed when he back from the church.*

21. *The Muslims group attacked our home [in] June 2011 at [time]. They faced my brother at our home's entrance and shot him by gun. Immediately, our neighbours take him to the nearest [hospital]. He was injured on his [body parts]. [In] June 2011, I heard the sad news that my brother died in hospital....*

22. *The Security Egyptian police arrested me several occasions because my religion activities....*

23. *The Egyptian Security Force arrested me when I defend my church in [location] when Muslims attempt to burn down our church....*

24. *On 2006, I was in church's meeting. We stay in church because a groups of Muslims surrounding the church and attempt to kill Christians because of our religion activities. The Egyptian police force arrested us and reported that we cause conflict between Christians and Muslims although we are the victim.*

25. *When I was at the University, the Egyptian security force arrested me because of my religion activities with youth meeting.*

26. *The Egyptian police force arrested me also and I been detained because of my relationship with a Muslim girl who converted to Christianity.*

27. The Tribunal discussed with the applicant the substance of the claims that he made in the statement and asked the applicant whether the two signatures appearing at the bottom of the document are his signatures and the applicant confirmed that they are his signatures but

he stated that he could not recall signing the document. In essence, the applicant claimed that [Mr A] must have forged his signature. In support of this claim, in the course of the hearing the applicant handed up a document titled *[deleted]*, dated [July] 2011 signed by [Mr A] and addressed to the Department, referring to documents that had been sent. The applicant stated that he did not have those documents and consequently it was not correct for [Mr A] to have made the claim that he had the documents. He stated that this supports his claim that [Mr A] had forged his signature and essentially made false claims on his behalf.

28. The applicant's representative submitted that it would not be difficult to electronically place the applicant's signature on those documents. The Tribunal is not an expert in document forgery but accepts as plausible that it is possible to place a signature electronically, but the Tribunal is of the view that it is far-fetched that the former migration agent made up the claims and forged the applicant's signature without the applicant's knowledge or willingness. The Tribunal asked the applicant if he has ever complained about the claimed forgery of his former agent (also a solicitor) to the Law Society or the OMARA and he stated that he never did. The Tribunal indicated that given the seriousness of the claimed forgery, it is difficult to understand why he did not do so. The applicant referred to an FOI application in 2012 and stated that as he was granted the protection visa, he did not see the need to complain about the conduct of the agent. He also said that he had lost contact. It is difficult to understand why a reasonable person discovering that fraudulent documents and signatures had allegedly been provided on their behalf, would not take serious action commensurate with the fraud committed. The Tribunal is of the view that the fact that the applicant never complained formally to a disciplinary body about the conduct of the former agent raises serious doubts about his claims that the agent had forged his signatures or made up the claims. The Tribunal has carefully considered the applicant's explanations and the representative's submissions but finds them unconvincing and unpersuasive.
29. In any event, the Tribunal explained to the applicant that even if the Tribunal were to accept that he did not personally complete or sign the form, if he causes it to be filled or if it is filled on his behalf, he is taken to have done so. The Tribunal indicated that the responsibility is with the applicant to ensure that correct information has been provided.
30. The Tribunal asked the applicant if following discovery that claimed incorrect information had been provided in the application for a protection visa, he had sought to correct the record, namely by informing the Department that incorrect information has been provided in the application. The applicant stated that he never had but this was essentially due to an accident. The applicant's representative submitted that there is no indication on the visa application form or any conditions on the visa grant requiring an applicant to notify the Department subsequent to the grant of the visa of any incorrect information. Although it is correct that subsequent to the visa grant, it can be argued that there is no positive obligation requiring a visa holder to notify the Department of incorrect information subsequent to the grant, it is nevertheless reasonable to expect that if the visa holder discovers that fraud had been committed in order to obtain the visa, that they would take action to correct the record and advise the Department. It appears to the Tribunal that the applicant was willing and able to benefit from the provision of incorrect information by obtaining a protection visa, raising doubts about his credibility and willingness to be truthful. By saying so, the Tribunal is not imposing a standard higher than a legal standard; in a civilised society there is an expectation that citizens would abide by the laws and it is not an imposition of a higher standard to expect a person who discovers forgery to report it and failure to act suggests a willingness to benefit from deception.
31. Given the above noted concerns, and in consideration of the evidence as a whole, the Tribunal does not accept that the applicant did not knowingly sign Form C and the accompanying statement; for those reasons, the Tribunal is satisfied that the applicant

provided information in those documents willingly and with the knowledge of the exact and nature of the claims that have been made. Whilst it is accepted that he was assisted by a migration agent whose conduct could be questionable, the Tribunal is satisfied that the applicant had in fact signed Form C and the statement provided in support.

### 32. ***Claims of harm***

33. In the application for a protection visa, the applicant has claimed that he fears harm on the basis of his brother's killing, his own detention, and having been involved in converting a former [girlfriend] from Islam to Christianity. A significant difference in the claims relates to the applicant's brother [Mr B]. The applicant has given distinct and entirely different versions of events relating to [Mr B]. In the statement supporting the application, the applicant claimed that [Mr B] was shot at the entrance of the family home on the [date] June 2011. In the later version, [Mr B] was abducted on [date] June 2011 and recorded dead on [date] June 2011 but in fact was held in captivity for [number] months. It is not in dispute that [Mr B] is alive.
34. In the course of the hearing, the Tribunal discussed with the applicant information in the delegate's decision record indicating that subsequent to the grant of the protection visa [in] August 2012, the Department received information that the applicant's [mother] lodged a subclass 309 Partner visa at one of the Department's overseas offices. Including in her application were two dependents, [Mr B], date of birth [date] and [Mr C] date of birth [date]. The Tribunal noted that [in] March 2013, the Department conducted an interview with the applicant's mother with the assistance of an interpreter. The applicant's two brothers were present at the interview. During this interview, the applicant's mother provided the following answers in relation to the applicant and his father.
- *"Have any of your children died?"* - Her response was *No*.
  - *"Was [the applicant] ever detained?"* - her response was *"No never"*.
  - *"Have they converted anybody before?"* - Her response was *"know the person in the shop was already thinking about this and he was just providing advice"*.
  - *"If he had converted people would he tell you?"* - Her response was *"this particular issue he could never hide this from me"*.
  - *"What problems did they face here in Egypt? Is it only in relation to this person in the shop?"* - Her response was *"yes it was only in relation to this person in the shop, this is what caused the problems afterwards"*.
35. In response to the questions about the above answers that his mother provided, the applicant gave evidence that his mother had suffered trauma and that contrary to what she said, he did not tell her everything and she did not know everything about him. He stated that there is a distinction in Arabic between being detained and being in prison. He stated that at the time of those responses, it was correct that none of her children had died because all the children were alive.
36. In written submissions to the Tribunal, the representative indicated that the Department relied solely on the statements of the applicant's mother at the Australian Embassy in Cairo when she was asked specific short questions. Although those answers directly relate to the credibility of the applicant's claims, under the circumstances, the responses cannot be relied upon to establish that the applicant had failed to comply with s.101 of the Act. The applicant has claimed that he was in custody for 2 to 3 days each of the three times he was detained.

The representative further submitted that when his mother was asked about detention, she answered negatively; the terms detention and custody have different meanings in the Arabic language. Detention can include imprisonment, whereas custody only means the temporary detention of a person by the authorities. The applicant's mother had honestly answered the question about her son. The applicant was in Australia when he was informed that his brother was killed and he provided information which he considered to be true at the time.

37. In oral submissions to the Tribunal, the representative stated that the mother's interview with the Department was conducted in Arabic and there is a difference between being jailed and being detained in Arabic. She stated that the mother was asked yes or no questions and she was not asked everything. When asked whether she knew everything about the applicant, this should not mean that the applicant would have told her everything and consequently those answers cannot be relied on. There are medical reports before the Tribunal referring to the mother suffering from [medical condition]. If the Tribunal were to accept that this is the case, then it should doubt the mother's responses in the course of the interview.
38. The Tribunal is of the view that the undisputed fact is that [Mr B] is not dead and it is correct that the mother does not have any children who died, supporting a conclusion that the mother was capable of remembering and of telling the truth, raising doubts about the applicant's version or assertions about linguistic differences, [medical condition], and the mother not knowing all about the applicant. It is difficult to accept that the mother would not have remembered that [Mr B] was thought to be "dead" but is now alive. This is not a minor issue but of most significance; the death of a child would naturally be one of the most difficult events for any parent to face and to suggest that she would not have mentioned this for the claimed reasons is implausible. The Tribunal is not persuaded or convinced by the applicant's explanations or submissions.
39. The Tribunal notes that [in] September 2014, the Department sent to the applicant a notice of intention to consider cancellation. The applicant's former representative provided submissions on 23<sup>rd</sup> and 24<sup>th</sup> October, 11 November 2014, and 20 January 2015.
40. In summary, the representative submitted that:
  - The applicant strongly denies that he ever provided incorrect answers. The record of interview between the Department and the applicant's mother in Cairo [in] March 2013 indicates that the mother was asked structured questions in the context of her own application for a visa through an interpreter and her answers are simple and often one-word responses. Information available to the Department and relevant to the questions were not put to the mother for her comments and consequently she did not have an opportunity to provide her answers to specific factual matters. She was asked leading questions prompting yes or no responses without being given the opportunity to elaborate on her responses. At the time of the interview, the Department had information relating to the death of [Mr B] who was present at the interview but neither the mother nor [Mr B] was asked to explain the death. The interview did not explore her knowledge of the circumstances in which her son [Mr B] was shot. She was therefore denied natural justice.
  - The "*undisputed fact*" is that [Mr B] was shot by Muslim extremists and injured and taken to hospital. His death certificate was issued by the Egyptian authorities [in] June 2012 and the family in Egypt informed the family in Sydney at that time. [Mr B] came home [in] October 2012 after his release from detention, subsequent to the applicant's hearing at the RRT on 9 June 2012. The applicant did not inform the Department about his brother

subsequent to the grant of the visa. The news however did not alter the fact the family continued to be the subject of persecution.

- [Mr B] was kidnapped [in] June 2011 and [the applicant's mother] reported this to the police on the same day. The attached detective's report details the location of the body in the hospital morgue. The deceased had died due to gunshot wounds to the face and the personal ID belonging to [Mr B] was found with the deceased. Positive identification of the deceased by the mother was not possible because of the disfigurement and her own distressed state. The family buried the body but [Mr B] was not in fact dead. He had been kidnapped and taken to a camp. He escaped in October 2012 and returned home where he discovered that he had been confirmed dead. [In] October 2012 [Mr B] reported to the police that he was still alive and he commenced urgent court action to cancel the decision recording his death. [The applicant's mother] commenced her Partner visa application and medical evidence indicates that she suffers from [medical condition]. The applicant did not consider it necessary to inform the Department that [Mr B] was not in fact dead. As far as they were concerned, the act of kidnapping him was an act of persecution against the family. It is possible that [Mr B] was kidnapped and held not only to punish him because of his religious beliefs, but also so that his identity could be used to falsely identify the body in the morgue.
- There has never been any intention to deceive the Department by failing to inform that the brother is in fact alive. The applicant's mother suffered severe emotional consequences as a result of those events as did the applicant. Both have had treatments from doctors and psychologists to help them deal in those difficult times. The applicant was severely injured in [an] accident [in] August 2012 causing further distress to the family in both Australia and in Egypt. He is pursuing a third-party compensation claim.
- There is extensive evidence before the Department relating to the history of persecution suffered by the family. The activities of the extremists continue, as evidence from the numerous emails sent by the mother to the Australian Embassy in Cairo when she was asking them to process her application urgently.
- The answers provided by the applicant's mother in the course of the interview "*differ from the actual events*" and to the evidence given at the RRT. The applicant and his father continue to provide services at the Coptic Orthodox Church in [suburb] and they have no other instances of non-compliance. They are both of good character and reputation. The applicant is [studying] and he continues to receive treatment for the injuries he sustained as a result of the [accident]. He is a young man who has been in Australia for over four years and he has settled well. He wishes to have the opportunity to remain in Australia.
- The documents provided are genuine.

41. The Tribunal has carefully considered the applicant's explanations and submission but finds them unpersuasive and unconvincing. In consideration of the evidence as a whole, the Tribunal is satisfied that the answers provided by the applicant's mother in the course of the Departmental interview are the correct answers.
42. In support of his claim relating to the brother's death, the applicant provided a copy of the brother's death certificate, which listed the cause of death as an "*accident*". The Tribunal



discussed the document with the applicant and asked him why the death certificate would say that [Mr B] had died as a result of an accident when in the application for a protection visa and the statement, it is claimed that he was shot. The applicant responded that the body was burnt. The Tribunal is satisfied that [Mr B] is not dead so the death certificate on its face does not contain accurate information, raising doubts about the authenticity of the document and clearly the accuracy of the information contained in the document.

43. The Tribunal asked the applicant who told him about [Mr B] being alive and he stated that his mother told him. The Tribunal asked him where [Mr B] was and he stated that he had been kidnapped and captured by strict Muslims who kidnapped him in June 2011. He said [Mr B] managed to escape his [kidnappers].
44. In accordance with s.424AA, the Tribunal discussed with the applicant information contained in the partner visa application (as referred to in the decision relating to the Father's cancellation - Matter [file number]) that the applicant's mother had provided an enrolment certificate for [Mr B], which was issued [in] November 2012 and which states that [Mr B] is enrolled in [a certain] year, in the academic year 2012 – 2013 at [name] University. The Tribunal indicated that there is no mention of [Mr B] having taken any leave or having missed over a year of his studies between June 2011 (the date of death recorded on the death certificate) and October 2012 when he returned to his family home. [Mr B] had stated on application Form 47A that he completed secondary study in June [year]. The Tribunal indicated that if [Mr B] had commenced his university study in September [year], by November 2012 he would be in [a certain] year of his studies, provided there were no interruptions to his studies, consistently with the information in the enrolment certificate. The Tribunal further indicated that the Tribunal in that matter arranged for inquiries to be made with [the] University to seek further information relating to [Mr B]'s study. The University confirmed that [Mr B]'s enrolment certificate is a genuine document that was issued by the University. Significantly, a member of staff at the University confirmed that [Mr B] had been enrolled in each year since [year] – [year] and that he attended university examinations in July 2011, February 2012 and July 2012. The University also confirmed the identity of students who attend examinations.
45. The Tribunal indicated to the applicant that the above information is relevant because it could raise doubts about the claim that [Mr B] had been kidnapped and had returned after being in captivity for six months since June 2011. In response to the invitation to comment on or respond to that information, the applicant stated that [Mr B] had been in an open university and he did not have to attend classes. He said the course was compressed. He said whilst the university will check student ID cards, they don't necessarily bother checking the file. He said his brother wanted to pursue his studies. In oral submissions to the Tribunal, the representative reiterated that the brother attended an open university which is a pathway in every university and one can study by correspondence. She stated that the reference to the third academic year does not mean that [Mr B] had completed his studies. She further submitted that the former Tribunal obtained verification by telephone and the officer from the University would not have had sufficient time to confirm the information. She argued that the comments by the officer from the university are "*weak evidence*" and cannot be relied upon to cancel the applicant's protection visa.
46. Post hearing, the Tribunal received from the representative a copy of the "*Enrolment Certificate*", open learning unit, faculty of [deleted] [name] University, referring to the applicant's brother [Mr B] being enrolled in level [number] / first semester of the academic year 2012/2013. The document refers to [Mr B] deferring his enrolment until he is [age] years of age. The document is marked and dated "[location] on: [date]/11/ 2012...". In post hearing submissions, the representative noted that as the certificate states, [Mr B] was in level [number] at the time the certificate was issued, not year [number] as incorrectly translated previously. The adviser argued that it is "*clear from the certificate that this is an*

*open University and hence they do not go by years, rather by levels as there is no attendance and the work is done by each student at their own pace and they clear each level once the work is completed, regardless in what timeframe this is completed in. Therefore the information the embassy took from the University is inaccurate in every respect.*" If indeed [Mr B] was enrolled in level [number] of the academic year 2012/2013, it is still difficult to accept that soon after his alleged escape (in October 2012), he would be seeking a deferment. Moreover, the certificate does not overcome the advice by the member of staff at the University confirming that [Mr B] had been enrolled in each year since [year] – [year] and that he attended university examinations in July 2011, February 2012 and July 2012. The Tribunal is satisfied that the evidence indicates that [Mr B] was enrolled in a course, that he attended university examinations in July 2011, February and July 2012. Being an open university does not necessarily corroborate the claim that he was in fact kidnapped. The fact is he was not dead, contrary to the claims made by the applicant.

47. In the delegate's decision record it is noted that [in] June 2011, the applicant was interviewed by a Departmental officer when he claimed that he was detained on three occasions in Egypt between 2006 and 2008. He claimed that he was detained because of his religious activities and that each time he was held for 2 to 3 days. He stated that he was afraid of being subjected to serious harm by Muslim extremists and the authorities for converting Muslims to Christianity. It is also noted in the decision record that on 23 February 2012, the applicant sought review by the RRT of the departmental decision to refuse to grant the visa RRT. On 15 June 2012, the RRT remitted the matter to the Department for reconsideration. In the decision record and referring to the applicant, the RRT Member noted both the applicant and his father had *"repeated the oral evidence they provided to the delegate. They indicated that they had each been detained by the authorities on three occasions, once together, and twice separately, for various reasons relating to the religious activities.....The applicants indicated that they were in custody for 2 to 3 days each time they were arrested..."*
48. The Tribunal asked the applicant about his claims that he had been detained and he stated that he was detained in 2006, 2007 and 2008. The Tribunal asked the applicant about the exact dates of his detention and he stated that he could not recall the exact dates but that it was in February 2006, and although not sure, in January 2008. He stated that he was detained for 2 to 3 days on each occasion. He said that he was released pending investigation. The Tribunal asked him why he could not recall the dates of his detention and he stated because those incidents happened nearly 10 years ago. The Tribunal acknowledges that the applicant's evidence in relation to the incidents of detention is consistent with what he had told the Department and the former RRT Member. The Tribunal appreciates that the incidents are claimed to have occurred about 8 to 10 years ago and the Tribunal does not expect the applicant to have a perfect memory of dates, however given the significance of one's detention and the fact that the applicant claimed to seek protection on the basis of, amongst other things, his detention, the Tribunal is of the view that it is not unreasonable to expect the applicant to have a clearer re-collection of the dates. On his own evidence, the applicant has been studying in Australia and he has completed a [qualification] in [course], suggesting a level of intellectual capacity to appreciate significance of events. Moreover, given that his visa has been cancelled on the basis of the provision of incorrect information, it is difficult to understand why the applicant is not clearer about the dates. The Tribunal is of the view that the lack of details about the dates raises doubts about the veracity of the claims of detention as well as the applicant's credibility.
49. Apart from the applicant's assertions, there is nothing before the Tribunal to suggest that the information provided in the enrolment certificate was incorrect or unreliable, or that the university staff member gave inaccurate information about [Mr B]. Moreover, the Tribunal finds it implausible that a person who had been kidnapped and presumably fearing for his life would have access to online courses, or would be interested in completing an online course, or would be sitting for examinations. The Tribunal is not persuaded by the applicant's

explanations and finds that the fact that the brother was enrolled at university and had attended classes are evidence that he was not kidnapped, raising serious doubts about the claim that he had been kidnapped and therefore had been presumed dead and consequently the claim that he had been dead.

50. In consideration of the evidence as a whole, the Tribunal is satisfied that [Mr B] had been studying continuously since [year] – [year] academic year. The Tribunal finds that he maintained enrolment at university since [year] and that he regularly attended examinations at the end of each semester. The Tribunal finds that this information is inconsistent with the applicant's claims that [Mr B] was dead or that he had been abducted and held in custody between June 2011 and October 2012. The Tribunal is satisfied that as [Mr B] was able to attend three sets of examinations during the period of his alleged abduction, the Tribunal finds that the applicant provided false information concerning [Mr B]'s abduction.
51. In accordance with s.424AA, the Tribunal discussed with the applicant the information relating to the assessment relating to International Treaties Obligation Assessment (ITOA) [in] March 2016 undertaken for the purpose of assessing whether Australia has *non-refoulement* obligations when it was noted that *"in light of my doubts regarding the client's general credibility outlined above, I am not prepared to give him the benefit of the doubt regarding his claims to have had a relationship with a Muslim woman who later converted to Christianity, and his claims to have been detained on three occasions by Egyptian authorities..."*. The ITOA assessment found that the applicant has not been detained by the Egyptian authorities, or that he is of any interest to the Egyptian authorities, or that he had a relationship with a Muslim woman who had converted to Christianity, or that he has ever been threatened or harassed by her family. The Tribunal indicated to the applicant that it considered the ITOA to be comprehensive and the delegate's findings to be highly persuasive. In response to the invitation to comment on or respond, the applicant referred to his former [girlfriend] who converted to Christianity.
52. Similarly, in accordance with s.424AA, the Tribunal indicated to the applicant that the adverse credibility finding made about the applicant by the Tribunal Member who determined his father's protection visa cancellation could be relevant to the Tribunal as it could support a finding of an adverse credibility finding. The applicant questioned why that would be so. The Tribunal is satisfied that the ITOA assessment and the adverse credibility findings in relation to the applicant in his father's cancellation review application support the Tribunal's concerns about the applicant's credibility.
53. The Tribunal discussed with the applicant the delay in lodging the application for a protection visa and asked him if indeed he had feared harm in returning to Egypt, why he would wait for three years to apply for a protection visa. He stated that he felt safe in Australia and that he had no friends or family to assist him. He said the priest helped him and he sought advice from people whom he thought were competent. The Tribunal is not persuaded. The Tribunal is satisfied that the substantial delay in the applicant lodging the application for a protection visa raises serious doubts about his claims of protection and his credibility generally. The Tribunal has therefore drawn adverse conclusions on the basis of the delay.
54. In submissions to the Tribunal dated 12 August 2016, the representative provided a summary of events leading to the cancellation of the applicant's visa. She reiterated the claims that the applicant has suffered persecution in Egypt on the basis of his Christian faith. She submitted that initially he was placed in custody by the Egyptian authorities in relation to an investigation concerning his religious activities when he was a university student. He was persecuted because of a relationship he had with the Muslim woman whom he had significantly contributed to her conversion to Christianity. The applicant found out that his brother [Mr B] was killed by fanatic Muslims and he provided a copy of the death certificate.

The applicant has provided to the Department information which to the best of his knowledge was accurate and true at the time.

55. In the course of the hearing, the Tribunal discussed with the applicant the documents provided including statements from [Mr B], [the applicant's mother], [Mr C], letter of support from Father [name] confirming the applicant's relationship with a Mulsim woman, reports from the applicant's treating doctor and psychologists essentially referring to symptoms of depression and extreme stress, the applicant's mother's emails to the Australian Embassy in Cairo, [Mr B]'s new passport and ID card, psychologist's report for the applicant's mother, report of kidnapping claim for [Mr B] made at the police station [in] June 2011, confirmation of death following [the applicant's mother]'s interview with the police [in] June 2011, police reports filed at police station dated [date] June 2011 and [date] June 2011, the applicant's interview with the police after escaping from his kidnappers, confirmation of death of [Mr B], application for cancellation of death certificate, receipt of payment for lodgement of application for the cancellation of death certificate, court order referring to the cancellation of the death certificate and reissuing of birth certificate for [Mr B], confirmation of [the] accident involving the applicant.
56. The Tribunal is mindful that the applicant has provided several documents regarding the claimed death of [Mr B] and subsequent actions taken by him, including court documents and police reports. The Tribunal went through those documents with the applicant in the course of the hearing and suggested that in Egypt, it is possible to obtain false documents including official documents. The applicant denied that any of those documents is fraudulent and he indicated that it would have been very difficult for him from Australia to obtain fraudulent documents from Egypt. In oral submissions to the Tribunal, the representative indicated that the plethora of evidence before the Tribunal means that it would be very difficult for the applicant to fabricate such evidence. She stated that there is nothing to suggest that the applicant had given false information and that more likely than not [Mr A] had fabricated the applicant's claims in the statement. The Tribunal is not persuaded or convinced. As the Tribunal pointed out in the course of the hearing, information before the Tribunal indicates that fraudulent documents are available in Egypt. In August 2011, DFAT reported that it is possible to get false copies of a range of official documents in Egypt, from passports to ID cards to education qualifications<sup>2</sup>. The Tribunal notes that the applicant has provided a death certificate which has turned out to be inaccurate as [Mr B] is still alive. Therefore if this document contained untruthful information, it is not far-fetched or implausible that documents relating to the court proceedings to rectify the record in Egypt and other documents also contain inaccurate information. Therefore, the Tribunal does not give those documents weight. The Tribunal is satisfied that the applicant has knowingly and willingly provided incorrect answers in the application for a protection visa.
57. The Tribunal has carefully considered the applicant's evidence and the material provided in support of his contention that he did not provide false information in the application for a protection visa or the accompanying statement. For the reasons explained above, Tribunal is satisfied that the applicant is a person who lacks credibility. The Tribunal is satisfied that he has knowingly and willingly provided untruthful information, and fabricated documents, to assist him in his application. The Tribunal is satisfied that the applicant has been untruthful in relation to his brother [Mr B], including the claims of his death, kidnapping and detention. The Tribunal is satisfied that the answers of the applicant's mother when interviewed by the Department in relation to her Partner visa application, were correct, which means that the

<sup>2</sup>DIAC Country Information Service 2011, *Country Information Report No. 11/49 – CIS Request No.EGY12187: Religious conversion certificate*, (sourced from DFAT advice of 10 August 2011), 11 August. (CX270573)

information provided by the applicant in his protection visa application is not correct. In oral evidence, the applicant told the Tribunal that he has paid for his mother's partner visa application and it would not make sense for him to do so if concerned about false information. The Tribunal is not persuaded. The Tribunal is satisfied that when the applicant's family realised that the truthful answers given in the partner visa application would have an adverse impact, they fabricated evidence in an attempt not to impact the protection visas.

58. For those stated reasons, the Tribunal rejects the claim that [Mr B] was shot, or that he was presumed dead, or that he was kidnapped, or that he was detained between June 2011 and October 2012, or at any other time. The Tribunal finds that such claims had been fabricated. Having reached an adverse credibility finding in relation to the applicant, the Tribunal is satisfied that the remainder of the applicant's claims made in his protection visa application were untruthful. The Tribunal finds that the applicant has never been detained by the Egyptian authorities or that he had converted his former [girlfriend] or anyone else to Christianity, or that he had ever been targeted by any Muslims or anybody else because of his religious beliefs, or his activities, or for any other reason.
59. In essence and for the stated reasons, the Tribunal finds that the information provided by the applicant's mother is correct and that it is inconsistent with the applicant's original claims for protection. Consequently the Tribunal finds that the applicant has not complied with section 101(b) of the Act because he provided incorrect information in relation to his protection claims. Specifically the Tribunal finds that the applicant's brother, [Mr B] with a date of birth [date] was not killed, that the applicant has never been detained by the Egyptian authorities as a result of his religious work, that he did not convert anyone from Islam to Christianity, and he did not apply for protection because he feared harm on any of the claimed basis.
60. For these reasons, the Tribunal finds that there was non-compliance by the applicant in the way described in the s.107 notice. It follows that the discretionary power to cancel the applicant's visa arises.

### **SHOULD THE VISA BE CANCELLED?**

61. As the Tribunal has decided that there was non-compliance in the way described in the notice given to the applicant under s.107 of the Act, it is necessary to consider whether the visa should be cancelled pursuant to s.109(1). Cancellation in this context is discretionary, as there are no mandatory cancellation circumstances prescribed under s.109(2).
62. In exercising this power, the Tribunal must consider the applicant's response (if any) to the s.107 notice about the non-compliance, and have regard to any prescribed circumstances: s.109(1)(b) and (c). The prescribed circumstances are set out in r.2.41 of the Regulations. Briefly, they are:

#### **• THE CORRECT INFORMATION**

63. The correct information is that the applicant's brother, [Mr B] with a date of birth [date] was not killed, that the applicant has never been detained by the Egyptian authorities as a result of his religious beliefs or activities, that the applicant did not assist his former girlfriend to convert from Islam to Christianity and that he was not targeted as a result.
64. The Tribunal appreciates that there is no intention in the visa cancellation process to 'punish' those who have been granted visas in circumstances when they would not have been granted the visas. However, the Tribunal is of the view that the integrity of the migration program is significant and that a visa holder who has obtained the visa on the basis of false

and/or misleading information cannot be overlooked. The Tribunal gives significant weight to the fact that the applicant was granted a protection visa on the basis of false information that he provided.

- ***THE CONTENT OF THE GENUINE DOCUMENT (IF ANY)***

65. The content of any document has not been at issue in this case.

- ***Whether the decision to grant a visa or immigration clear the visa holder was based, wholly or partly, on incorrect information or a bogus document***

66. On the basis of the available information and for the reasons outlined above, the Tribunal is satisfied that the applicant was granted a protection visa wholly, or partly on the basis of the false claims that he has made. The applicant has essentially claimed that his brother's killing is evidence supporting his claim that there is a real chance that he would be persecuted in Egypt if he were to return death. He had claimed that he had been threatened and that he had converted a former girlfriend to Islam. These are the most significant claims made by the applicant in the application for a protection visa; they are not minor or peripheral claims. The Tribunal is satisfied that the applicant provided incorrect information and that as a consequence of that incorrect information, he was granted a protection visa. The Tribunal is satisfied that had the correct information being provided, the applicant would not have been granted a protection Visa

67. The applicant has maintained that he did not provide incorrect information and the Tribunal has given significant weight to the fact that the applicant has not conceded, when it is clear that incorrect information has been provided.

- ***The circumstances in which the non-compliance occurred***

68. As outlined above, the applicant made claims in the application for a protection Visa which were later contradicted by information provided by his mother when she was applying for a partner visa.

69. The applicant has not accepted or conceded that he had provided incorrect information. He assigned blame onto a former migration agent who has been the subject of disciplinary action. Whilst the conduct of the former agent might be questionable, in the sense that he might have been willing to assist the applicant in preparing and lodging an application for a protection visa on the basis of false claims, the Tribunal, and for the reasons explained above, finds that the applicant has voluntarily and knowingly provided the incorrect information.

70. The Tribunal has given significant weight to this aspect to support the finding that the applicant's visa should be cancelled.

- ***The present circumstances of the visa holder***

71. The applicant gave evidence that he is currently in a relationship with an Australian citizen and that they have lived together. He stated that they have no children and that he has lodged a Partner visa application [in] May 2016 sponsored by his partner. He stated that his partner suffers from a permanent disorder but she does not qualify for the disability pension.

72. The applicant stated that he has been working very hard in Australia up until the cancellation of the visa when he stopped working because he was not permitted. He said he has been working in Australia supporting other members of the family and looking after his partner. He stated that he has considered himself to be her carer. He said he has applied for a position

with the Australian defence forces but has been unsuccessful because he failed the test. He stated that he serves people in church and was [occupation].

73. The applicant's partner gave evidence that the applicant plays a significant part in her life and she would not want to lose him. She stated that they have been a couple since 2012 and she has sponsored him for a partner visa application. She stated that she is unwell and is only able to work a few hours a week. She stated that she could not imagine herself living without the applicant.
74. In submissions to the Tribunal, the representative indicated that the applicant's partner is dependent on him for support. She stated that the applicant has been a valuable member of the Australian community; he has worked and studied.
75. The applicant has provided documents relating to an injury he sustained in [an] accident which has impacted on his movements. He has also provided a report from a psychologist referring to the applicant being extremely stressed and depressed. The Tribunal accepts that the applicant has been in [an] accident which has caused injuries and that he is stressed and depressed; the Tribunal is sympathetic that the applicant upon hearing from the Department about the notice of intention to consider cancellation, would have been stressed and anxious. However, it is important to recognise that the integrity of the migration program is important and that individual adverse consequences as a result of cancellation do not necessarily, or cannot, mean a favourable exercise of discretion. The Tribunal has considered the circumstances of the applicant's partner and the Tribunal accepts that she is unwell and that he is her carer. The Tribunal notes and the applicant's partner has supported him as a sponsor of his partner visa application. That application would be determined according to law and it is not for this Tribunal to make any findings in relation to the relationship. If the relevant decision-maker is satisfied that the applicant is in a genuine and continuing relationship with his partner, his application for the partner visa would be considered accordingly.
76. On balance, the Tribunal is not satisfied that the applicant's current circumstances warrant the favourable exercise of discretion.

- ***The subsequent behaviour of the visa holder concerning his or her obligations under Subdivision C of Division 3 of Part 2 of the Act***

77. At no stage has the applicant accepted or conceded that he has provided incorrect information in the application for a protection visa. The Tribunal gives this aspect significant weight in deciding to cancel the visa.

- ***Any other instances of non-compliance by the visa holder known to the Minister***

78. There is no evidence before the Tribunal of any other instances of non-compliance by the applicant.

- ***The time that has elapsed since the non-compliance***

79. The incorrect information was provided [in] April 2011 in the initial application for a protection visa. It has been over five years since non-compliance. The Tribunal does not consider the five-year period to warrant the favourable exercise of discretion.

- ***Any breaches of the law since the non-compliance and the seriousness of those breaches***

80. There is no evidence before the Tribunal that the applicant has breached any law since the non-compliance.

- ***Any contribution made by the holder to the community***

81. The Tribunal acknowledges that the applicant is involved in the Coptic Church at [suburb] and the Tribunal has given weight to that involvement. The Tribunal also gives regard to the submissions by the representative that the applicant has worked and studied in Australia to better himself.
82. The Tribunal is satisfied that the applicant's contribution to the community is limited and does not outweigh the reasons to cancel the visa.

- ***Are there any other relevant factors which should be considered?***

83. Whilst these factors must be considered, they do not represent an exhaustive statement of the circumstances that might properly be considered to be relevant in any given case: *MIAC v Khadgi* (2010) 190 FCR 248. The Tribunal may also have regard to lawful government policy. The relevant policy is set out in the Department's Procedural Advice Manual) PAM3 'General visa cancellation powers'. This policy requires delegates to also have regard to matters such as whether the visa would have been granted if the correct information had been given, whether there are persons in Australia whose visa would, or may, be automatically cancelled under s.140 of the Act, and whether the visa cancellation may result in Australia breaching its international obligations.
84. The applicant is a Coptic Christian and although the Tribunal is satisfied that he did not suffer the claimed harm, the Tribunal nevertheless considers any potential harm on the basis of being a Coptic Christian. As discussed with the applicant in the course of the hearing, the ITOA found that the applicant is not a person in respect of whom Australia has *non-refoulment* obligations. The Tribunal is not bound by the findings in relation to the ITOA assessment, however the Tribunal gives that assessment weight. The Tribunal found that the applicant has not suffered any of the claimed harm. The Tribunal acknowledges that Christians in Egypt can be harmed, however, DFAT in its 24 November 2015 Country Report<sup>3</sup> noted that following the January 2011 revolution, and particularly during the Morsi administration, there have been religious difficulties but that Christians and Muslims "*from all walks of life live peacefully with their Muslim neighbours, particularly in the urban centres*" <sup>4</sup> The Tribunal is satisfied on the evidence before it that the applicant does not have a profile that would mean that there is a real chance or a real risk of the applicant facing serious or significant harm as contemplated by the Act, on the basis of being a Coptic Christian.
85. In consideration of the evidence as a whole, including the applicant's individual circumstances either singularly or cumulatively, the Tribunal is not satisfied that the applicant faces a real chance of persecution, or that there is a real chance that he would suffer serious harm for any other claimed reason, either singularly or cumulatively. Furthermore, in consideration of the evidence as a whole, the Tribunal finds that there are no substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's being removed from Australia, there is a real risk that the applicant would suffer significant harm in the form of, arbitrary deprivation of life, or the death penalty being carried out, or torture, or cruel or inhuman treatment or punishment, or degrading treatment or punishment.
86. The Tribunal has decided that there was non-compliance by the applicant in the way described in the notice given under s.107 of the Act. Further, having regard to all the relevant

<sup>3</sup> Department of Foreign Affairs and Trade 2015, *DFAT Country Report, Egypt*, 24 November 2015



circumstances, as discussed above, the Tribunal concludes that the visa should be cancelled.

## **DECISION**

87. The Tribunal affirms the decision to cancel the applicant's Subclass 866 (Protection) visa.

Antoinette Younes  
**Senior Member**

## ATTACHMENT – Relevant Extracts from the *Migration Act 1958*:

### 5 Interpretation

- (1) In this Act, unless the contrary intention appears:
- bogus document***, in relation to a person, means a document that the Minister reasonably suspects is a document that:
- (a) purports to have been, but was not, issued in respect of the person; or
  - (b) is counterfeit or has been altered by a person who does not have authority to do so; or
  - (c) was obtained because of a false or misleading statement, whether or not made knowingly.

### 97 Interpretation

In this Subdivision:

***application form***, in relation to a non-citizen, means a form on which a non-citizen applies for a visa, being a form that regulations made for the purposes of section 46 allow to be used for making the application.

***passenger card*** has the meaning given by subsection 506(2) and, for the purposes of section 115, includes any document provided for by regulations under paragraph 504(1)(c).

Note: ***Bogus document*** is defined in subsection 5(1).

### 98 Completion of visa application

A non-citizen who does not fill in his or her application form or passenger card is taken to do so if he or she causes it to be filled in or if it is otherwise filled in on his or her behalf.

### 99 Information is answer

Any information that a non-citizen gives or provides, causes to be given or provided, or that is given or provided on his or her behalf, to the Minister, an officer, an authorised system, a person or the Tribunal, or the Immigration Assessment authority, reviewing a decision under this Act in relation to the non-citizen's application for a visa is taken for the purposes of section 100, paragraphs 101(b) and 102(b) and sections 104 and 105 to be an answer to a question in the non-citizen's application form, whether the information is given or provided orally or in writing and whether at an interview or otherwise.

### 100 Incorrect answers

For the purposes of this Subdivision, an answer to a question is incorrect even though the person who gave or provided the answer, or caused the answer to be given or provided, did not know that it was incorrect.

### 101 Visa applications to be correct

A non-citizen must fill in or complete his or her application form in such a way that:

- (a) all questions on it are answered; and
- (b) no incorrect answers are given or provided.

### 107 Notice of incorrect applications

- (1) If the Minister considers that the holder of a visa who has been immigration cleared (whether or not because of that visa) did not comply with section 101, 102, 103, 104 or 105 or with subsection (2) in a response to a notice under this section, the Minister may give the holder a notice:
- (a) giving particulars of the possible non-compliance; and
  - (b) stating that, within a period stated in the notice as mentioned in subsection (1A), the holder may give the Minister a written response to the notice that:
    - (i) if the holder disputes that there was non-compliance:
      - (A) shows that there was compliance; and
      - (B) in case the Minister decides under section 108 that, in spite of the statement under sub-subparagraph (A), there was non-compliance—shows cause why the visa should not be cancelled; or
    - (ii) if the holder accepts that there was non-compliance:
      - (A) give reasons for the non-compliance; and
      - (B) shows cause why the visa should not be cancelled; and
  - (c) stating that the Minister will consider cancelling the visa:

- (i) if the holder gives the Minister oral or written notice, within the period stated as mentioned in subsection (1A), that he or she will not give a written response—when that notice is given; or
    - (ii) if the holder gives the Minister a written response within that period—when the response is given; or
    - (iii) otherwise—at the end of that period; and
  - (d) setting out the effect of sections 108, 109, 111 and 112; and
  - (e) informing the holder that the holder's obligations under section 104 or 105 are not affected by the notice under this section; and
  - (f) requiring the holder:
    - (i) to tell the Minister the address at which the holder is living; and
    - (ii) if the holder changes that address before the Minister notifies the holder of the Minister's decision on whether there was non-compliance by the holder—to tell the Minister the changed address.
- (1A) The period to be stated in the notice under subsection (1) must be:
- (a) in respect of the holder of a temporary visa—the period prescribed by the regulations or, if no period is prescribed, a reasonable period; or
  - (b) otherwise—14 days.
- (1B) Regulations prescribing a period for the purposes of paragraph (1A)(a) may prescribe different periods and state when a particular period is to apply, which, without limiting the generality of the power, may be to:
- (a) visas of a stated class; or
  - (b) visa holders in stated circumstances; or
  - (c) visa holders in a stated class of people (who may be visa holders in a particular place); or
  - (d) visa holders in a stated class of people (who may be visa holders in a particular place) in stated circumstances.
- (2) If the visa holder responds to the notice, he or she must do so without making any incorrect statement.